

Remarks

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing Amendment to the Claims, claims 1-51 are pending in the application, of which claims 1, 10, 11, 12, 13, 14, 22, 32, 40, and 50 are independent. By the foregoing Amendment, claims 1, 10-14, and 22 are sought to be amended. Claims 46-51 are sought to be added. No new matter is embraced by this amendment and its entry is respectfully requested. Based on the above Amendment and the remarks set forth below, it is respectfully requested that the Examiner reconsider and withdraw all outstanding objections and rejections.

Withdrawal of Application from Finality

Applicant would like to thank the Examiner for the courteous telephonic interview between Applicant's representative and the Examiner on Friday, March 13, 2006, in which the Examiner agreed to withdraw the finality of this application. In the Final Office Action, dated July 15, 2005, the Examiner did not address the patentability of claims 30-45, which were added in the previous Amendment and Response filed on March 2, 2005.

Claim Objections

The Examiner, on page 2 of the Office Action, has objected to claims 10-13, 17, 19, 21, 25, 27, and 29 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant would like to thank the Examiner for the

indication of allowable subject matter. Applicant has amended allowable claims 10-13 to include the limitations of the base claim and an intervening claim. Applicant has amended the base claims and believes that the base claims are allowable over the cited art. Thus, at this time, Applicant has not amended the base claims to include the allowable subject matter indicated in claims 10-13, 17, 19, 21, 25, 27, and 29. Applicant respectfully reserves the right to amend the base claims in the future to include the allowable subject matter if deemed necessary to bring the case to allowance.

Rejection under 35 U.S.C. § 102

The Examiner, on page 4 of the Final Office Action, has rejected claims 1, 14, and 22 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,725,378 to Schuba *et al.* (hereinafter “Schuba”). Applicant respectfully traverses this rejection. Based on the remarks set forth below, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

To anticipate a claim of a pending application, a single reference must disclose each and every element of the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1397 (Fed. Cir. 1986). The exclusion of a claimed element from the single source is enough to negate anticipation by that reference. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984).

With reference to independent claim 1, the Examiner states that Schuba teaches Applicant’s invention. Applicant respectfully disagrees. With regards to independent claim 1, Schuba does not teach or suggest every element of Applicant’s claimed

invention. For example, Schuba does not teach or suggest at least the following claimed elements of:

a computer having application software in communication with a network protocol, the computer comprising a network interface and *a zombie detection driver coupled between, and in communication with, the network protocol and the network interface, the zombie detection driver comprising:*

a transmit module to receive outgoing packets from a software application and to discard the outgoing packets that are determined to be from a zombie application prior to being transmitted over a network;

a receive module to receive incoming packets from a network interface and to discard the incoming packets that are determined to be from a zombie application; and

a monitor module in communications with the transmit module and the receive module to track transmit packet patterns from and receive packet patterns to the software application and to determine whether the software application is the zombie application based upon the transmit and receive packet patterns.

Unlike the present invention, Schuba does not teach a computer comprising a network interface and a zombie detection driver coupled between, and in communication with, the network protocol and the network interface, the zombie detection driver comprising a transmit module to receive outgoing packets from a software application and discard the outgoing packets determined to be from a zombie application prior to being transmitted over a network. Schuba also does not teach or suggest the zombie detection driver comprising a monitor module in communications with the *transmit module ... to track transmit packet patterns from ... the software application and to determine whether the software application is the zombie application based upon the transmit ... packet patterns.* To the contrary, Schuba teaches detection and examination of TCP packets sent to a destination host by a monitor, wherein the monitor and the

Douglas D. Boom
Appl. No. 09/886,975

destination host are separate entities and the monitor monitors the TCP packets along the network. *Schuba*, col. 7, line 50 – col. 8, line 33.

With reference to independent claims 14 and 22, the Examiner states that Schuba teaches Applicant's invention. Applicant respectfully disagrees. With regards to independent claims 14 and 22, Schuba does not teach or suggest every element of Applicant's claimed invention. For example, Schuba does not teach or suggest at least the following claimed element of: determining whether the software application is a known good application, wherein if the software application is not a known good application, then applying a zombie rating to the software application and if the software application is a known good application, then removing the software application from the watch list and/or zombie list. In fact, Schuba is silent on having a zombie rating for a software application.

Thus, for at least the foregoing reasons, Applicant respectfully submits that independent claims 1, 14, and 22, and the claims that depend therefrom (claims 2-13, 15-21, and 23-29, respectively) are not anticipated by Schuba. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of independent claims 1, 14, and 22, and the claims that depend therefrom respectively.

Rejection under 35 U.S.C. § 103

The Examiner, on page 6 of the Final Office Action, has rejected claims 2-9, 15, 16, 18, 20, 23, 24, 26, and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,725,378 to Schuba *et al.* (hereinafter "Schuba") in view of U.S. Patent No. 6,321,338 to Porras *et al.* (hereinafter "Porras"). Applicant respectfully disagrees. Based

Douglas D. Boom
Appl. No. 09/886,975

on the remarks set forth below, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

Claims 2-9 depend from independent claim 1, and are patentable over Schuba for at least the reasons stated above. Furthermore, Porras does not teach or suggest the features missing from Schuba. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 2-9.

Claims 15, 16, 18, and 20 depend from independent claim 14, and are patentable over Schuba for at least the reasons stated above. Furthermore, Porras does not teach or suggest the features missing from Schuba. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 15, 16, 18, and 20.

Claims 23, 24, 26, and 28 depend from independent claim 22, and are patentable over Schuba for at least the reasons stated above. Furthermore, Porras does not teach or suggest the features missing from Schuba. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 23, 24, 26, and 28.

New Claims

New claims 46-51 have been added. Claims 46-49 depend from independent claims 10-13, respectively. As indicated above, independent claims 10-13 include allowable subject matter and thus, are patentable over the cited references. Therefore, independent claims 10-13, and the claims that depend therefrom (claims 46-49, respectively) are patentable over the cited references.

Douglas D. Boom
Appl. No. 09/886,975

Independent claim 50 includes allowable subject matter. Therefore, independent claim 50 and the claims that depends therefrom (claim 51) are also patentable over the cited references.

Douglas D. Boom
Appl. No. 09/886,975

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all currently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
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On: January 17, 2006

Signature:



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